

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A. No.517 of 2017

DATED:30-10-2017

Between:

The Commissioner of Income Tax
Vijayawada ... Appellant

And

Chagarlamudi Vijaya Kumari
Vijayawada ... Respondents

COUNSEL FOR THE APPELLANT: Mr. J.V. Prasad,
Senior Standing Counsel
for the Income Tax
Department

COUNSEL FOR THE RESPONDENT: -

THE COURT MADE THE FOLLOWING:

JUDGMENT: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

This appeal under Section 260A of the Income Tax Act, 1961 (for short, "the Act"), is filed by the Department, feeling aggrieved by order dt.18.11.2010 in I.T.A. No.509/Vizag/2008, on the file of the Income Tax Appellate Tribunal, Visakhapatnam (for short, "the Tribunal").

2. The respondent along with her husband jointly constructed a building "Sasank Towers" (joint property) during the years relevant to the assessment years 2000-01 and 2001-02 and the respondent alone has constructed a building "Sasank Estates" during the years relevant to the assessment years 2001-02 and 2002-03. A search and seizure operation was carried out by the Department in the hands of both the assesseees on 21.11.2001. During the course of search, an estimate prepared for the proposed construction of the joint property was found. Similarly, a valuation report prepared by the bank in order to assess the fair market value of the individual property was also found. Besides the above, the department also seized the books of account, vouchers and bills in respect of the construction of the said properties. During the course of search proceedings, a sworn statement of Mr. Ch. Ratna Kishore, husband of the petitioner, was recorded on 21.12.2001 wherein he admitted a sum of Rs.75.00 lakhs as additional

income on account of defects in the maintenance of construction details. However, he has retracted the said admission later. By placing reliance on the documents cited above and also the admission made by the husband of the respondent, the Assessing Officer has referred the matter of valuation of the properties to the Departmental Valuation Officer (DVO). Based on the report submitted by the DVO, the difference between the value determined by the DVO and the cost declared by the assesseees was treated as undisclosed income in the hands of the assesseees. The said amount was distributed equally in the hands of both the assesseees. Both the assesseees have challenged both the block assessment order as well as the regular assessment order before the Commissioner of Income Tax (Appeals) [for short, CIT(A)]. The CIT(A) has partially confirmed the addition made in the block assessment order and directed that a deduction of 15% be allowed towards difference in the cost of materials and 10% be allowed towards personal supervision, from the value determined by the DVO. In the appeals filed against the regular assessment, the CIT(A) has deleted the protective additions, since he has already confirmed the additions made in the block assessments.

3. The aforementioned orders were challenged by the assesseees, before the Tribunal. Vide its order dt.27.7.2006, the

Tribunal allowed the appeals pertaining to the block assessment proceedings, by holding that there was a valid retraction of the statement made under Section 132(4) of the Act by the husband of the respondent and it has accordingly held that the said statement is not binding on these two assesseees. As regards the estimation of building construction and valuation report seized during the course of search, the Tribunal held that the said two documents cannot be considered as evidencing the cost of the construction incurred by the assesseees. Accordingly, the Tribunal directed the Assessing Officer to delete the entire additions made in the block assessment proceedings on account of difference in the cost of construction in respect of the buildings. As regards the regular assessment, the Tribunal set aside the assessments and remanded the matter back to the Assessing Officer for fresh consideration. While doing so, the Tribunal has directed the Assessing Officer to provide reasonable and effective opportunity of being heard to the parties.

4. After remand, the Assessing Officer adopted the value determined by the DVO in the valuation report obtained during the course of block assessment proceedings and gave further deductions from that value, to the extent of 15% towards the difference in the cost of materials and 10% on

account of personal supervision. The difference amount so arrived at on the joint property was distributed equally in the hands of both the assesseees and the difference arrived for the individual property was added in the hands of the respondent. The appeal filed before the Commissioner (Appeals) was dismissed and the order of the Assessing Officer was confirmed. Feeling aggrieved by the said order, the respondent has filed ITA Nos.509 and 510/Vizag/08 and her husband has filed ITA No.511/Vizag/2008. The Tribunal by common order dt.18.11.2010, has partly allowed the said appeals, and aggrieved by the order of the Tribunal insofar as it relates to ITA No.509/Vizag/2008 is concerned, the respondent filed the present appeal.

5. The only ground on which the Tribunal has allowed the appeal is that the Assessing Officer has not specifically rejected the books produced by the assesseees and therefore he has committed a serious error in relying upon the report of the DVO. In its order, the Tribunal observed that in its earlier order it has already given a finding that the assesseees have maintained the books of account for the construction of the buildings and that the said books have been seized during the course of search and thus the books were not specifically rejected by the Assessing Officer. The Tribunal has referred to

and relied upon the judgment in *Rajhans Builders v. Dy. C.I.T.*¹ and held that it is settled legal proposition that a reference to the DVO can be made only when books of account are rejected by pointing out the defects therein and that therefore the action of the Assessing Officer in utilizing the DVO's report for framing the assessment without rejecting the books of account is not in accordance with law and it has accordingly deleted the additions made on the basis of the report of the DVO.

6. In our opinion, the reasoning of the Tribunal is legal and sound, as when regular books have been maintained showing the expenditure incurred by the assessee, unless they are rejected on the ground that they are fabricated or false or unreliable, it would be wholly irrational nay, impermissible for the Assessing Officer to make his own assessment based on his own assumptions.

7. For the aforementioned reasons, we do not find any substantial questions of law arising in this appeal and the same is accordingly dismissed.

C.V. NAGARJUNA REDDY, J

CHALLA KODANDA RAM, J

30-10-2017

bmr

¹ (2010) 41 SOT 331

